Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Application of Fidelity Television, Inc. (Assignor) and Viacom Television Stations Group of Los Angeles, LLC (Assignee) To Assign the License of KCAL-TV, Los Angeles, California.	)))))))))))))))	File No. BALCT-20020305AAW Facility ID No. 21422

MEMORANDUM OPINION AND ORDER

Adopted: May 3, 2002 **Released: May 3, 2002**

By the Commission: Commissioner Copps issuing a separate statement.

1. The Commission has before it for consideration the above-referenced application for the assignment of the license of television station KCAL-TV, Los Angeles, California from Fidelity Television, Inc. (Fidelity) to Viacom Television Stations Group of Los Angeles, LLC (Viacom). In the application, Viacom requests a six-month temporary waiver to come into compliance with the radio-television cross-ownership rule in the Los Angeles market. For the reasons stated below we grant the application and the requested waiver.

2. Viacom's proposed acquisition of KCAL-TV implicates three of our multiple ownership rules. First, because the acquisition would result in Viacom controlling two television stations in the Los Angeles market, the local television multiple ownership rule (the duopoly rule) is implicated.[1] Second, the radio-television cross-ownership rule[2] is triggered because Viacom controls several radio stations in the Los Angeles market in addition to its television interests. Finally, Viacom already exceeds the national ownership limits set out in §73.3555(e) of our rules.

3. Viacom currently controls the licensee of television station KCBS-TV, Los Angeles. KCBS-TV and KCAL-TV are both located in the Los Angeles Designated Market Area (DMA) and have overlapping Grade B contours. Under the proposed transaction, Viacom will control two television stations in the DMA. The duopoly rule would permit this common ownership if: (1) at least eight independently owned and operating, full-power commercial and noncommercial television stations would remain in the DMA post-merger; and (2) at least one of the stations to be merged is not ranked among the

[1] *See* 47 C.F.R. § 73.3555(b).

[2] 47 C.F.R. § 73.3555(c).

top four stations in the DMA by audience share.[3] In the Los Angeles DMA, at least 18 independently owned and operating, full-power commercial and non-commercial television stations will remain in the Los Angeles DMA if the application is approved. Furthermore, KCAL-TV, an independent station, is not among the top four ranked stations in the DMA. Therefore, the proposed acquisition complies with the duopoly rule.

4. Viacom asserts that its proposed acquisition would comply with the radio-television cross-ownership rule, [4] except as to the number of radio stations that Viacom would control in the Los Angeles market. The radio-television cross-ownership rule is triggered when either: (1) the predicted or measured 1 mV/m contour of an FM station or the predicted or measured 2 mV/m contour of an AM station encompasses the entire community of license of a commonly owned television station; or (2) the Grade A contour of the television station encompasses the entire community of license of a commonly owned radio station. Although the radio-television cross-ownership rule is triggered based on contours, compliance is evaluated based on Arbitron Radio Metro Markets.

5. Under the radio-television cross-ownership rule, an entity may directly or indirectly own, operate or control up to two commercial television stations and six commercial radio stations if at least 20 independently owned media voices would remain in the market post-merger.[5] For the purposes of this rule, media voices include television stations, radio stations, certain English-language newspapers, and cable television. Cable television counts as only one voice regardless of how many individual cable systems operate in the DMA.

6. Both stations are located in the Los Angeles radio metro market, the second largest in the country. The Grade A contours of KCBS-TV and KCAL-TV entirely encompass the communities of license of seven radio stations controlled by subsidiaries of Viacom that are in that market.[6] Viacom has identified 59 independently owned and operated media voices that would exist in the Los Angeles radio metro market if it acquired KCAL-TV. Therefore, Viacom would be able to own the two television stations and up to six radio stations. As Viacom recognizes, it will have to divest one of the seven radio stations it currently owns in the Los Angeles market. Viacom has asked for a period of six months from the consummation of its proposed acquisition of KCAL-TV within which to come into compliance with the radio-television cross-ownership rule in the Los Angeles radio metro market.

7. In the past, the Commission has found that providing parties a period of time to come into compliance with the multiple ownership rules was appropriate to facilitate multi-station transactions, especially when the request was incidental to the larger transaction.[7] The Commission has not yet addressed this issue in the context of a single station transaction like the one presented here. In the cases involving multiple stations, the Commission has stated that a forced, immediate sale could impose severe economic hardship on applicants without offsetting public interest benefits, restrict the value of the assets and artificially limit the range of potential purchasers.[8] Here, Viacom asks for relief similar to that granted in the multi-station transactions, even though only one station is being transferred. As noted above, Los Angeles is the second largest market in the country and, following the proposed acquisition, will still be served by 59 independently owned and operated media voices. Because of the exceptional

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[3] 47 C.F.R. § 73.3555(b).

[4] 47 C.F.R § 73.3555(c).

[5] 47 C.F.R. § 73.3555(c)(2)(i)(A).

[6] The radio stations affected are KCSB-FM, Los Angeles; KFWB(AM), Los Angeles; KLSX(FM), Los Angeles; KNX(AM), Los Angeles; KRTH(FM), Los Angeles; KTWV(FM), Los Angeles; and KROQ(FM), Pasadena.

[7] *See, e.g., The Providence Journal Company*, 12 FCC Rcd 2883 (1997); *Argyle Television, Inc*., 12 FCC Rcd 10737 (1997); *Shareholders of CBS*, 15 FCC Rcd 8230 (2000).

[8] *See, e.g., Multimedia, Inc*. 11 FCC Rcd 4883, 4889 (1995); *Stockholders of CBS, Inc*., 11 FCC Rcd 3733, 3755 (1995).

size of this market and the very large number of media voices in it, we do not believe that granting the requested time to come into compliance will unduly limit media diversity in the market. The size and diversity of the Los Angeles media market makes this a unique circumstance that is unlikely to be present in other media markets. Therefore, we grant Viacom six months from the consummation of its acquisition of KCAL-TV to come into compliance with our radio-television cross-ownership rule in the Los Angeles market. We fully expect that in this large media market Viacom will be able to divest itself of one of its seven radio stations within the period of the waiver.

8. As noted above, Viacom currently exceeds the broadcast television national ownership limit. In *Shareholders of CBS*,[9] the Commission found that the merged Viacom/CBS would have a national television audience reach of slightly more that 41 percent. Viacom was given twelve months to come into compliance with the rule. On April 6, 2001, the U.S. Court of Appeals for the District of Columbia Circuit, while considering the appeal of the Commission's *1998 Biennial Regulatory Review,* stayed the time for Viacom to come into compliance with the national television multiple ownership rule.[10] Following the Court's remand of that proceeding to the Commission, we further extended the stay pending resolution of the remand.[11] In any event, because Viacom already has a television station in the Los Angeles DMA, the acquisition of KCAL-TV will not have an effect on its total national audience share.[12] The proposed acquisition will preserve the status quo and does not require any action by us on this particular issue at this time.

9. We have reviewed the proposed acquisition and find that the applicants are fully qualified and that the grant of the license assignment application for KCAL-TV would serve the public interest, convenience and necessity.

10. ACCORDINGLY, IT IS ORDERED, THAT the request for 6 months to come into compliance with the radio-television cross-ownership rule, Section 73.3555(c), in the Los Angeles market IS GRANTED, but within 6 months of consummation of the transaction, Viacom is directed to file the applications necessary to bring it into compliance in that market.

11. FURTHER, IT IS ORDERED, THAT the application to assign the license of KCAL-TV, Los Angeles, California from Fidelity Television, Inc. to Viacom Television Stations Group of Los Angeles, LLC, File No. BALCT-20020305AAW, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[9] 15 FCC Rcd at 8235.

[10] *Fox Television Stations, Inc. v. FCC*, No 01-1136 (D.C. Cir. 2001).

[11] *1998 Biennial Regulatory Review*, MM Docket 98-35, FCC 02-98 (rel. March 28, 2002).

[12] *See* 47 C.F.R. § 73.3555(e)(2)(ii).

SEPARATE STATEMENT
OF COMMISSIONER MICHAEL J. COPPS

Re: Application of Fidelity Television, Inc. and Viacom Television Stations Group of Los Angeles to Assign the License of KCAL-TV

I support this waiver regarding the license transfer of KCAL-TV in Los Angeles because it is limited to six months and because I believe the unique vibrancy of the Los Angeles market can support the waiver for such a brief period of time.

With the range of radio properties available to sell, so that Viacom may come into quick compliance with our rules, I expect the company's best efforts to result in a sale well within the time period allotted. I do not expect to see, nor do I expect to support, a request for an extension of the waiver we grant today.